

Kerala Gazette No. 43 dated 29th October 2019.

PART I

Section i



GOVERNMENT OF KERALA

Law (Leg. Publication) Department

NOTIFICATION

No. 4878/Leg.Pbn.2/2019/Law. *Thiruvananthapuram, Dated, 15th March, 2019.*

The following Ordinance, Promulgated by the President of India and published in the Gazette of India, Extraordinary, Part II, Section I dated the 21st day of February, 2019 is hereby republished for general information.

By order of the Governor,

B. G. HARINDRANATH,

Law Secretary.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 21st February, 2019/Phalgun 2, 1940 (Saka)

**THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE)
SECOND ORDINANCE, 2019**

[No. 4 OF 2019]

Promulgated by the President in the Seventieth year of the Republic of India.

AN

ORDINANCE

to protect the rights of married Muslim women and to prohibit divorce by pronouncing talaq by their husbands and for matters connected therewith or incidental thereto;

WHEREAS the Muslim Women (Protection of Rights on Marriage) Bill, 2017 has been passed by the House of the People and is pending in the Council of States;

AND WHEREAS the Muslim Women (Protection of Rights on Marriage) Ordinance, 2018 with certain modifications was promulgated by the President on the 19th day of September, 2018;

AND WHEREAS the Muslim Women (Protection of Rights on Marriage) Bill, 2018 to replace the said Ordinance has been passed by the House of the People and is pending in the Council of States;

AND WHEREAS the Muslim Women (Protection of Rights on Marriage) Ordinance, 2018 cease to operate on the 21st January, 2019, and to give continued effect to the provisions of the said Ordinance, the Muslim Women (Protection of Rights on Marriage) Ordinance, 2019 was promulgated by the President on the 12th day of January, 2019;

AND WHEREAS the Muslim Women (Protection of Rights on Marriage) Bill, 2018 replacing the Muslim Women (Protection of Rights on Marriage) Ordinance, 2019 with necessary official amendments was listed for consideration and passing in Rajya Sabha and it could not be taken up;

AND WHEREAS to give continued effect to the provisions of the Muslim Women (Protection of Rights on Marriage) Ordinance, 2019, it is necessary to take immediate necessary action in the matter;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

CHAPTER I

PRELIMINARY

1. *Short title, extent and Commencement.*—(1) This Ordinance may be called the Muslim Women (Protection of Rights on Marriage) Second Ordinance, 2019.

(2) It shall extend to the whole of India except the State of Jammu and Kashmir.

(3) It shall be deemed to have come into force on the 19th day of September, 2018.

2. *Definitions.*—In this Ordinance, unless the context otherwise requires,—

(a) “electronic form” shall have the same meaning as assigned to it in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(b) “*talaq*” means *talaq-e-biddat* or any other similar form of *talaq* having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband; and

(c) “Magistrate” means a Judicial Magistrate of the First Class Exercising Jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974), in the area where the married Muslim woman resides.

CHAPTER II

DECLARATION OF *TALAQ* TO BE *VOID* AND ILLEGAL

3. *Talaq to be void and illegal.*—Any pronouncement of *talaq* by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be *void* and illegal.

4. *Punishment for pronouncing talaq.*—Any Muslim husband who pronounces *talaq* referred to in section 3 upon his wife shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

CHAPTER III

PROTECTION OF RIGHTS OF MARRIED MUSLIM WOMEN

5. *Subsistence allowance.*—Without prejudice to the generality of the provisions contained in any other law for the time being in force, a married Muslim woman upon whom *talaq* is pronounced shall be entitled to receive from her husband such amount of subsistence allowance for her and dependent children as may be determined by the Magistrate.

6. *Custody of minor children.*—Notwithstanding anything contained in any other law for the time being in force, a married Muslim woman shall be entitled to custody of her minor children in the event of pronouncement of *talaq* by her husband, in such manner as may be determined by the Magistrate.

7. *Offence to be cognizable, compoundable, etc.*—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) an offence punishable under this Ordinance shall be cognizable, if information relating to the commission of the offence is given to an officer in charge of a police station by the married Muslim woman upon whom *talaq* is pronounced or any person related to her by blood or marriage.

(b) an offence punishable under this Ordinance shall be compoundable, at the instance of the married Muslim woman upon whom *talaq* is pronounced with the permission of the Magistrate, on such terms and conditions as he may determine;

(c) no person accused of an offence punishable under this Ordinance shall be released on bail unless the Magistrate, on an application filed by the accused and after hearing the married Muslim woman upon whom *talaq* is pronounced, is satisfied that there are reasonable grounds for granting bail to such person.

8. *Repeal and savings.*—(1) The Muslim Women (Protection of Rights on Marriage) Ordinance, 2019 (Ord. 1 of 2019) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Muslim Women (Protection of Rights on Marriage) Ordinance, 2019 (Ord. 1 of 2019) shall be deemed to have been done or taken under the provisions of this Ordinance.

RAM NATH KOVIND,
President.

DR. G. NARAYANA RAJU,
Secretary to the Govt. of India.
